No. 16-1011

In the Supreme Court of the United States

WESTERNGECO LLC, PETITIONER

v.

ION GEOPHYSICAL CORPORATION

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FEDERAL CIRCUIT

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE SUPPORTING PETITIONER

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QUESTION PRESENTED

The Patent Act of 1952, 35 U.S.C. 1 *et seq.*, provides that, when a patent owner prevails in an infringement action, "the court shall award the claimant damages adequate to compensate for the infringement." 35 U.S.C. 284. An award of actual damages can include lost profits that the patent owner would have earned absent the infringement. *Yale Lock Mfg. Co.* v. *Sargent*, 117 U.S. 536, 552-553 (1886). The question presented is as follows:

Whether a patent owner that has proved a domestic act of patent infringement may recover lost profits that the patentee would have earned outside the United States if that domestic infringement had not occurred.

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INTEREST OF THE UNITED STATES

This case presents the question whether the owner of a U.S. patent that was infringed within the United States may recover as damages the profits that the U.S. patentee would have earned on the high seas if the infringement had not occurred. The United States has a substantial interest in the resolution of that question, since it concerns the measure of recovery for infringing a patent issued by the United States Patent and Trademark Office, and analogous compensatory-damages issues have arisen under the copyright laws. See pp. 20-21, *infra*. The government also has a broader interest in the proper application of the presumption against extraterritorial application of U.S. law. At the invitation of the Court, the United States filed a brief as amicus curiae at the petition stage of this case.

STATEMENT

1. The Patent Act of 1952 (Patent Act), 35 U.S.C. 1 *et seq.*, provides that "whoever without authority makes, uses, * * * or sells any patented invention, *within the United States* * * * , infringes the patent." 35 U.S.C. 271(a) (emphasis added). Under the Patent Act, it is also infringement to supply "in or from the United States" (1) "all or a substantial portion of the components of a patented invention * * * in such manner as to actively induce the combination of such components outside of the United States"; or (2) "any component of a patented invention that is especially made or especially adapted for use in the invention and not a staple article or commodity of commerce suitable for substantial noninfringing use, * * * intending that such component will be combined outside of the United States." 35 U.S.C. 271(f)(1) and (2); see *Life Techs. Corp.* v. *Promega Corp.*, 137 S. Ct. 734, 739-742 (2017).

To enforce the exclusive rights granted by a U.S. patent, "[a] patentee shall have remedy by civil action for infringement of his patent." 35 U.S.C. 281. When a patentee prevails in an infringement suit, "the court shall award the claimant damages adequate to compensate for the infringement, but in no event less than a reasonable royalty for the use made of the invention by the infringer." 35 U.S.C. 284.

Compensatory damages are "adequate," within the meaning of Section 284, when they "ensure that the patent owner is placed in as good a position as he would have been in" absent the infringement. *General Motors Corp.* v. *Devex Corp.*, 461 U.S. 648, 655 (1983); see *id.* at 654-655 ("Congress sought to ensure that the patent owner would in fact receive full compensation for 'any damages' he suffered as a result of the infringement.")

(quoting H.R. Rep. No. 1587, 79th Cong., 2d Sess. 1 (1946)). Accordingly, damages for infringement may include lost profits that the patentee would have earned absent the defendant's infringing conduct. See *Aro Mfg. Co.* v. *Convertible Top Replacement Co.*, 377 U.S. 476, 507 (1964); *Yale Lock Mfg. Co.* v. *Sargent*, 117 U.S. 536, 552-553 (1886); *Seymour* v. *McCormick*, 57 U.S. (16 How.) 480, 490 (1854) ("What a patentee 'would have made, if the infringer had not interfered with his rights.'").

The damages award in a successful suit for patent infringement shall "in no event [be] less than a reasonable royalty." 35 U.S.C. 284. Courts have traditionally calculated a reasonable royalty by determining what royalty the patent owner and infringer would have agreed to in a hypothetical licensing negotiation. See, *e.g.*, *Lucent Techs., Inc.* v. *Gateway, Inc.*, 580 F.3d 1301, 1324-1325 (Fed. Cir. 2009), cert. denied, 560 U.S. 935 (2010); *Panduit Corp.* v. *Stahlin Bros. Fibre Works, Inc.*, 575 F.2d 1152, 1159 (6th Cir. 1978).

2. Petitioner owns four patents relating to marine seismic surveys, which are used to search for oil and gas beneath the ocean floor. Pet. App. 24a, 79a-80a. To conduct a marine seismic survey, a ship typically tows an array of sensors attached to cables, called "streamers," that detect soundwaves reflected off the ocean floor. *Id.* at 24a-25a. The information obtained is used to create maps of the subsurface geology. *Id.* at 25a. Petitioner's U.S. patents cover a system for controlling the movement of the streamers to produce more efficient surveys and higher-quality data. *Id.* at 25a, 79a-80a. Rather than sell or license this system to others, petitioner manufactures it domestically, then performs seismic

surveys on the high seas using the system, and earns fees for performing those services. *Id.* at 25a, 40a.

Respondent manufactures components of a marine-seismic-survey system that, when assembled, embodies petitioner's patented invention. Pet. App. 40a. As relevant here, respondent manufactured components of that system in the United States and exported them to customers for assembly abroad. *Ibid.* Respondent's customers abroad then assembled the completed system and used it to perform surveys on the high seas in competition with petitioner. *Ibid.*

3. In 2009, petitioner sued respondent for patent infringement under Section 271(f). Pet. App. 25a. A jury found that respondent had infringed six different claims from petitioner's four patents. *Id.* at 26a-27a. With respect to the calculation of damages, petitioner introduced evidence that it would have earned more than $90 million in profits on ten specific survey contracts that it had lost to respondent's customers because of respondent's domestic infringement. See *id.* at 40a-41a. The jury awarded petitioner $12.5 million in royalties and $93.4 million in lost profits. *Id.* at 175a.

Respondent moved to vacate the lost-profits award. Pet. App. 116a. Respondent argued that it "would give improper extraterritorial effect to U.S. law" to compensate petitioner for profits that it had lost as a result of respondent's customers "making" or "using" the survey system abroad. *Ibid.* The district court denied the motion, concluding that lost-profits damages were appropriate to compensate petitioner for the harm caused by respondent's domestic infringement. *Id.* at 117a-118a.

4. The court of appeals affirmed the jury's verdict of infringement, but a divided panel reversed the award of lost profits. Pet. App. 23a-53a.

a. The court of appeals observed that the contracts that petitioner had lost were for performing seismic surveys "on the high seas, outside the jurisdictional reach of U.S. patent law." Pet. App. 41a. The court concluded that awarding lost profits for those contracts would contravene the presumption against the extraterritorial application of U.S. law. *Id.* at 41a-45a.

The court of appeals interpreted circuit precedent involving infringement under 35 U.S.C. 271(a) to hold that "the export of a finished product cannot create liability for extraterritorial use of that product." Pet. App. 42a; see *Power Integrations, Inc.* v. *Fairchild Semiconductor Int'l, Inc.*, 711 F.3d 1348, 1371-1372 (Fed. Cir. 2013), cert. denied, 134 S. Ct. 900 (2014). The court declined to apply a different rule for damages under Section 271(f). The court stated that, "[j]ust as the United States seller or exporter of a final product cannot be liable for use abroad, so too the United States exporter of the component parts cannot be liable for use of the infringing article abroad." Pet. App. 45a.

b. Judge Wallach dissented from the lost-profits holding. Pet. App. 54a-75a. He agreed that "patent rights granted by the United States are geographically limited." *Id.* at 54a. He explained, however, that the question presented involved "the proper measure of damages *given* a finding of liability" for domestic infringement. *Id.* at 70a. As to that question, Judge Wallach concluded that, under ordinary common-law damages principles, lost profits should be recoverable to put petitioner, "as near as may be, in the situation [it] would have occupied if the wrong had not been committed." *Id.* at 57a (quoting *Albemarle Paper Co.* v. *Moody*, 422 U.S. 405, 418-419 (1975)). He also viewed an award of

lost profits in these circumstances as consistent with decisions in which this Court has approved the use of "non-infringing foreign sales to calculate lost profits where the patented product [wa]s manufactured in the United States." *Ibid.*; see *Dowagiac Mfg. Co.* v. *Minnesota Moline Plow Co.*, 235 U.S. 641 (1915); *Manufacturing Co.* v. *Cowing*, 105 U.S. 253 (1882); *Brown* v. *Duchesne*, 60 U.S. (19 How.) 183 (1857).

5. The court of appeals denied rehearing en banc. Pet. App. 176a-177a. Judge Wallach, joined by Judges Newman and Reyna, dissented for the reasons expressed in Judge Wallach's dissent from the panel decision. *Id.* at 178a-180a.

6. Petitioner sought review in this Court of both the court of appeals' lost-profits holding and its resolution of petitioner's unrelated request for enhanced damages. The Court granted that petition for a writ of certiorari, vacated the court of appeals' judgment, and remanded for reconsideration in light of *Halo Electronics, Inc.* v. *Pulse Electronics, Inc.*, 136 S. Ct. 1923 (2016). See 136 S. Ct. 2486. On remand, the court of appeals declined to reconsider its lost-profits analysis, Pet. App. 4a n.1, and Judge Wallach renewed his dissent, *id.* at 13a-22a.

SUMMARY OF THE ARGUMENT

The court below held that the U.S. patentee could recover some but not all of the profits that it would have earned but for respondent's domestic infringement of its U.S. patent. Relying on the presumption against extraterritorial application of U.S. law, the court construed 35 U.S.C. 284 not to authorize recovery of profits that petitioner would have earned on the high seas. That holding is inconsistent with the text and purpose of Section 284.

In cases where domestic infringement prevents the U.S. patentee from realizing profits that it would otherwise have earned abroad, the court of appeals' approach ensures that the damages award will *not* be "adequate to compensate" the patentee for all the losses it suffered because of that domestic infringement. 35 U.S.C. 284. That rule systematically undercompensates U.S. patent owners for infringement when the patent owner derives profits from cross-border commerce. It is at odds with common-law principles and this Court's precedents, and it is not required by the presumption against extraterritoriality. The judgment below should be reversed.

A. The general common-law rule for compensatory damages is that an "injured party is to be placed, as near as may be, in the situation he would have occupied if the wrong had not been committed." *Wicker* v. *Hoppock*, 73 U.S. (6 Wall.) 94, 99 (1867). Consistent with that common-law principle, this Court has long held that damages are "adequate to compensate" for infringement, 35 U.S.C. 284, when they restore the U.S. patentee to "as good a position as he would have been in" if infringement had not occurred. *General Motors Corp.* v. *Devex Corp.*, 461 U.S. 648, 655 (1983). Traditional principles of proximate causation may limit the availability or extent of compensatory damages in any given case. Here, however, a jury found that petitioner would have earned approximately $90 million on ten specific contracts if respondent had not infringed its U.S. patent. The court of appeals did not dispute that petitioner had proved the requisite causal link between the infringement and petitioner's failure to obtain those contracts. As the case comes to this Court, including those profits in the damages award is thus necessary to

place petitioner in the "position * * * [it] would have been in" absent the infringement. *Ibid.*

There is no sound basis for excluding profits that petitioner would have earned on the high seas as an element of compensable harm. In order for those lost profits to be compensable, petitioner was required to prove that respondent's domestic infringement of petitioner's U.S. patent caused economic loss to petitioner. But once that showing was made, the relevant question was *how much* profit petitioner had lost as a proximate result of respondent's wrongful conduct, not *where* petitioner would have earned those profits in a hypothetical world if the domestic infringement had not occurred.

B. This Court has stated three times, albeit in dicta, that the Patent Act permits recovery for harms occurring abroad as the result of domestic infringement. See *Dowagiac Mfg. Co.* v. *Minnesota Moline Plow Co.*, 235 U.S. 641 (1915); *Manufacturing Co.* v. *Cowing*, 105 U.S. 253 (1882); *Brown* v. *Duchesne*, 60 U.S. (19 How.) 183 (1857). Lower courts, relying on these precedents, have held that recovery for foreign harms arising from domestic infringement is permitted both under the Patent Act, *e.g.*, *K. W. Ignition Co.* v. *Temco Elec. Motor Co.*, 283 F. 873, 879 (6th Cir. 1922), cert. denied, 260 U.S. 746 (1923), and the Copyright Act, *e.g.*, *Sheldon* v. *Metro-Goldwyn Pictures Corp.*, 106 F.2d 45, 52 (2d Cir.), cert. denied, 308 U.S. 617 (1939), and aff'd, 309 U.S. 390 (1940). Under those longstanding principles, petitioner is entitled to recover the profits that it would have earned on the high seas if respondent had not infringed its U.S. patent, thereby restoring petitioner to the position it would have occupied but for that wrongful conduct.

C. The court of appeals' decision reflects a misapplication of the presumption against extraterritorial application of U.S. law. This case does not involve regulation of foreign conduct. Respondent infringed petitioner's U.S. patent through conduct inside the United States (specifically, supplying in or from the United States components of petitioner's invention for assembly abroad). The Patent Act gives every U.S. patentee a cause of action for infringement, 35 U.S.C. 281, and it provides that "the court shall award the claimant damages adequate to compensate for the infringement" if the suit is successful, 35 U.S.C. 284.

Providing a complete remedy for infringement committed within the United States involves a domestic application of U.S. law, even when a court considers evidence of foreign events or conduct when calculating damages. Courts can and regularly do take account of foreign events, such as publications constituting prior art, when determining whether particular acts within the United States give rise to liability for infringement. Courts can similarly consider evidence of profits that would have been earned abroad when determining the magnitude of harm that domestic patent infringement has caused to a U.S. patentee. Considering such evidence does not regulate foreign conduct or significantly implicate the concerns that underlie the presumption against extraterritoriality.

This Court's decision in *RJR Nabisco, Inc.* v. *European Community*, 136 S. Ct. 2090 (2016), does not require a contrary result. The Court in *RJR Nabisco* held that the private cause of action under the Racketeer Influenced and Corrupt Organizations Act (RICO), 18 U.S.C. 1964(c), was not available to persons who suffer foreign injuries. Unlike RICO, however, the Patent

Act's substantive provisions do not apply abroad, and instead reach only infringing acts occurring wholly within the United States. And while Section 1964(c) defines the class of plaintiffs who can assert a private cause of action, Section 284 does not address any plaintiff's right to sue, but defines the relief that should be awarded after the plaintiff has sued and proved infringement. In addition, whereas RICO's substantive provisions incorporate federal criminal laws that protect the general public, patent infringement is a violation of rights specific to the patentee. Every act of infringement therefore causes the patent holder a distinct legal injury within the United States, even where some consequences of that injury are experienced abroad.

ARGUMENT

PETITIONER MAY RECOVER THE PROFITS THAT IT WOULD HAVE EARNED BY PERFORMING SURVEYS ON THE HIGH SEAS IF RESPONDENT HAD NOT INFRINGED ITS PATENT

A. Whether A Compensatory-Damages Award Is "Adequate" Depends On How Much Profit The Infringement Caused The Patentee To Lose, Not Where The Patentee Would Have Earned That Profit

1. When a U.S. patentee proves that its patent was infringed, the patentee may recover damages "adequate to compensate for the infringement." 35 U.S.C. 284. Patent infringement is a species of tort. *E.g.*, *Schillinger* v. *United States*, 155 U.S. 163, 169-170 (1894). And the "general rule" at common law is that damages are adequate to compensate for a wrong when the compensation is "equal to the injury." *Wicker* v. *Hoppock*, 73 U.S. (6 Wall.) 94, 99 (1867). "The injured party is to be placed, as near as may be, in the situation he would

have occupied if the wrong had not been committed." *Ibid.*; see, *e.g.*, Restatement (Second) of Torts § 903 cmt. a, at 453-454 (1979) (Restatement) ("substantially equivalent in a pecuniary way to [the position] which [the plaintiff] would have occupied had no tort been committed").

This Court has long interpreted the Patent Act to embody that same rule, under which damages are "adequate to compensate for the infringement," 35 U.S.C. 284, when "the patent owner is placed in as good a position as he would have been in" if the patent had not been infringed. *General Motors Corp.* v. *Devex Corp.*, 461 U.S. 648, 655 (1983); see *Seymour* v. *McCormick*, 57 U.S. (16 How.) 480, 490 (1854) (similar). A patentee is entitled to recover "the difference between [its] pecuniary condition after the infringement, and what [its] condition would have been if the infringement had not occurred." *Aro Mfg. Co.* v. *Convertible Top Replacement Co.*, 377 U.S. 476, 507 (1964) (quoting *Yale Lock Mfg. Co.* v. *Sargent*, 117 U.S. 536, 552 (1886)); see 7 Donald S. Chisum, *Chisum on Patents* § 20.01 (2011) ("the best approximation of the amount necessary to restore the owner to the financial position he would have enjoyed had the infringer not engaged in unauthorized acts in violation of the owner's exclusive patent rights").

Consistent with the general common-law rule governing tort damages, see Restatement § 906 cmt. a (1979); *id.* §§ 430-453 (1965), recovery of lost profits under Section 284 is limited by familiar principles of proximate causation. See *Rite-Hite Corp.* v. *Kelley Co.*, 56 F.3d 1538, 1546 (Fed. Cir.) (en banc), cert. denied, 516 U.S. 867 (1995); *id.* at 1558-1560 (Nies, J., dissenting in part) (agreeing that proximate cause limits recovery);

see also 3 William C. Robinson, *Law of Patents for Useful Inventions* § 1053, at 321 n.3 (1890) (Robinson) (noting that "remote consequential damages cannot be recovered"). Although Section 284 provides for compensatory damages that restore the patentee's lost profits, it does not permit recovery for losses that are too remotely or indirectly tied to the acts that infringed the U.S. patent.

2. By its nature, the identification of an appropriate compensatory-damages award depends on *how much* the plaintiff was harmed by the defendant's wrongful conduct. To measure the extent of the loss, the plaintiff proffers evidence of its actual position after the wrong, and evidence of the position that it would have occupied if the wrong had not occurred; the difference between the two is the amount of damages. *E.g.*, Restatement §§ 903, 912 & cmt. d (1979). It is irrelevant to the calculation of actual damages, however, *where* the plaintiff would have earned profits if the defendant had not committed the tort. Although "[r]emoteness in time or space may give rise to the likelihood that the other intervening causes have taken over the responsibility," when "causation is found, and other factors are eliminated, it is not easy to discover any merit whatever in the contention that such physical remoteness should of itself bar recovery." W. Page Keeton et al., *Prosser and Keeton on the Law of Torts* § 43, at 282-283 (5th ed. 1984) (*Prosser & Keeton*); see 1 Dan B. Dobbs et al., *Law of Torts* § 208 (2d ed. 2011) (an injury is not too remote "merely because time or distance separates the defendant's act from the plaintiff's harm") (footnotes omitted).

After stating the general rule that compensatory damages should restore the plaintiff to the position that it would have occupied but for the wrongful conduct, the

Restatement identifies several circumstances in which compensatory damages may be reduced, *id.* §§ 918-923 (1979), such as when the plaintiff "could have avoided" the harm "by the use of reasonable effort" after the tort, *id.* § 918. But the Restatement does not suggest that the amount of recovery depends on *where* the plaintiff would have earned profits if the tort had not occurred. Accordingly, a foreign tourist negligently injured in a car crash in the United States may receive full compensation from the tortfeasor, including for lost wages the tourist would have earned in his home country. The fact that the wages would have been earned abroad would not prevent the defendant's domestic negligence from being treated as the proximate cause of their loss.

3. Calculation of lost profits under the Patent Act similarly depends on how much profit the U.S. patentee lost because of the domestic infringement, not the place where the patentee would have earned profits if its U.S. patent had not been infringed. In calculating damages for patent infringement, a court may consider whether and how the patentee earned profits by selling or using the patented invention, and the extent to which the infringement interfered with that business. *E.g.*, *Seymour*, 57 U.S. (16 How.) at 489. When domestic infringement causes the patentee to lose profits it otherwise would have earned outside the United States, damages are "adequate to compensate for the infringement"—*i.e.*, they place the patentee in the position it would have occupied if the infringement had not occurred, *e.g.*, *General Motors*, 471 U.S. at 655—only if the award reflects that real-world economic loss.

For example, imagine that Acme Manufacturing has a U.S. patent on a device for drilling oil; it manufactures the device in the United States and earns $100 million

annually in profits from sales of the device in the Middle East. If Copycat Company made the same device in the United States and sold it in the Middle East, and thereby cut Acme's export profits in half, the unauthorized domestic manufacture would infringe the U.S. patent. See 35 U.S.C. 271(a). Although Copycat's overseas sales would not themselves be infringing, they would still be evidence of the extent to which Copycat's domestic infringement harmed Acme. In such a case, an award of damages would not be "adequate to compensate for the infringement," 35 U.S.C. 284, unless the award included the profits that Acme was unable to earn overseas because of Copycat's domestic infringement.[1]

The award would similarly be inadequate if Acme chose not to sell or license its patented device, but instead earned $100 million in profits annually by performing services using that device abroad. If Copycat infringed the patent by manufacturing the same device in the United States, and then used the device abroad to cut Acme's overseas services market in half, that domestic infringement would cause Acme to lose profits from its services market abroad. If the damages award did not reflect those losses, it would not be adequate to compensate Acme for Copycat's domestic infringement.

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[1] The same would be true if Copycat instead infringed by supplying from the United States components of the invention with the requisite intent that the invention be assembled abroad. See 35 U.S.C. 271(f). Section 271(f)'s animating purpose is to provide for like treatment of the supply of components for assembly abroad and the manufacturing of the completed invention for export. See pp. 21-22, *infra*.

Of course, the patentee must prove that claimed losses are actually attributable to the domestic infringement. See *Seymour*, 57 U.S. (16 How.) at 489. When an act of infringement occurs inside the United States, but all of the other relevant business activity is abroad, it may be more difficult for the U.S. patentee to prove the requisite causal link. Cf. *Prosser & Keeton* § 43, at 282-283. If an infringer had a particularly effective foreign sales force, for example, the profits that the infringer actually earned abroad might be greater than the profits that the U.S. patentee would have earned abroad if the domestic infringement had not occurred. And in some cases, the link between infringement and lost profits may be too tenuous, with too many intervening or unforeseeable causes, to permit recovery under ordinary principles of proximate causation. See generally Restatement §§ 430-453 (1965).

In this case, however, the court of appeals did not question whether respondent's infringement under Section 271(f) caused petitioner's loss of profits from ten specific contracts to perform marine seismic surveys. See Pet. App. 67a, 175a. Rather, the court applied a categorical rule precluding an award of patent-infringement damages for profits that would have been earned outside the United States. See *id.* at 44a-45a. As the case comes to this Court, the award of lost profits is therefore necessary to restore petitioner to the "position * * * [it] would have been in" absent the infringement. *General Motors*, 461 U.S. at 655.

B. Judicial Precedent And The Statutory Context Confirm That The Patent Act Allows Recovery Of Profits That Petitioner Would Have Earned Abroad Absent The Domestic Infringement

1. This Court's decisions confirm that damages are "adequate to compensate for the infringement," 35 U.S.C. 284, only if they encompass all the profits the patentee lost because of the infringement, including profits the patentee would have earned abroad. In three cases, the Court has addressed the ability of U.S. patentees to recover for foreign harms attributable to domestic acts of patent infringement. See *Dowagiac Mfg. Co.* v. *Minnesota Moline Plow Co.*, 235 U.S. 641 (1915); *Manufacturing Co.* v. *Cowing*, 105 U.S. 253 (1882); *Brown* v. *Duchesne*, 60 U.S. (19 How.) 183 (1857). Although the Court has not squarely resolved the question presented here, the Court has consistently suggested in dicta that damages for foreign injuries may be awarded in order to fully compensate the patentee for the harms caused by domestic infringement.

In *Duchesne*, this Court denied compensation to a plaintiff whose patented invention was installed on a foreign vessel abroad before the vessel entered U.S. waters on a transitory commercial voyage. The Court explained that the use of the device "outside of the jurisdiction of the United States" was not an infringement of the patent holder's rights, and that the foreign vessel "could hardly be said to use [the invention] while she was at anchor in the port, or lay at the wharf" within the United States. 60 U.S. (19 How.) at 195-196. The Court stated, however, that the outcome would have been different if the device had been "manufactured on [the vessel's] deck while she was lying in the port" in-

side the United States. *Id.* at 196. In those circumstances, the Court stated, the defendant would have committed domestic infringement, and the patent owner would have been entitled to recover "for the injury he sustained, and the benefit and advantage which he (the defendant) derived from the invention,"[2] even though "[t]he chief and almost only advantage which [he] derived from the use of this improvement was on the high seas." *Ibid.*

In *Manufacturing Co.*, the Court affirmed a U.S. patentee's recovery of profits that it would have earned from sales to both domestic and foreign customers. In that case, the patentee manufactured pumps in the United States for sale and use in the oil-drilling regions of Canada and Pennsylvania. 105 U.S. at 254, 256. Although the Court did not specifically address the foreign nature of the Canadian sales, it held that the patent owner was entitled to recover the infringer's full profits on all the sales, without distinguishing between the infringer's profits from sales in Canada and Pennsylvania. *Ibid.*

In *Dowagiac Manufacturing*, the Court again suggested that damages for domestic infringement may include compensation for lost sales abroad. A plaintiff who held a patent on plow technology sued a U.S.-based manufacturer of infringing plows, as well as wholesalers who had sold the plows in the United States and Canada. 235 U.S. at 643, 650. The manufacturer settled, and the wholesalers were ordered to pay nominal damages. *Id.* at 643. This Court reversed the damages award and remanded on unrelated grounds. *Id.* at 651.

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[2] Until 1946, the Patent Act provided for disgorgement of the infringer's profits. *Aro Mfg.*, 377 U.S. at 505-506.

But the Court instructed that, on remand, the wholesalers could not be required to pay damages for their sales in Canada because the wholesalers' own acts with regard to the plows at issue had been "wholly done in a foreign country." *Id.* at 650.

Particularly relevant for present purposes, the Court in *Dowagiac Manufacturing* distinguished *Manufacturing Co.* by noting that the defendants there had manufactured the infringing articles in the United States before the foreign sales. *Dowagiac Mfg.*, 235 U.S. at 650. Recovery for the foreign sales in *Manufacturing Co.* was appropriate, the *Dowagiac Manufacturing* Court explained, because in *Manufacturing Co.* "the defendant" itself had "made the infringing articles in the United States." *Ibid.* The wholesalers in *Dowagiac Manufacturing*, by contrast, had engaged in no similar domestic infringement linked to their sales in Canada, so damages could not be awarded for those foreign sales. *Ibid.* Thus, while the Court in *Manufacturing Co.* itself had not specifically addressed the significance of the foreign locus of some of the relevant sales, the Court in *Dowagiac Manufacturing* did address that point and confirmed that profits from foreign sales were recoverable so long as they resulted from the defendant's own domestic infringement.

2. Various lower federal courts—often relying on this Court's statements in *Dowagiac Manufacturing*—have held that an award for domestic patent infringement should encompass all profits that the U.S. patentee lost, regardless of where the patentee would have earned those profits.

a. In *Ketchum Harvester Co.* v. *Johnson Harvester Co.*, 8 F. 586 (C.C.N.D.N.Y. 1881) (Blatchford, C.J.), the court upheld an award of royalties "for each [patented]

machine * * * made in the United States for sale abroad and sold abroad." *Id.* at 586. The court stated that, "[a]lthough the patent could give no protection abroad in the sale of machines abroad, it gave protection in the United States in making machines in the United States for sale abroad." *Ibid.* The court recognized "that the sale is the fruition, and gives the profit, and that the sale is abroad, and the patent does not cover the sale abroad." *Id.* at 587. The court explained, however, that "the unlawful act of making [in the United States] is made hurtful by a sale, wherever made." *Ibid.* While recognizing that "[t]he legal damages for making and selling here may be, in some cases, greater than the legal damages for making here and selling abroad," the court stated that "to deprive the patentee of all damages for unlawful making here, because the article is sold abroad, is to deprive him of part of what his patent secures to him." *Ibid.*; see 3 Robinson § 909, at 72 n.3 (citing *Ketchum Harvester* with approval); see also, *e.g.*, *K. W. Ignition Co.* v. *Temco Elec. Motor Co.*, 283 F. 873, 879 (6th Cir. 1922) (similar, noting that the "defendants would be equally liable whether the [patented devices] were sold abroad or here, they having been manufactured in the United States"), cert. denied, 260 U.S. 746 (1923).

Courts have also enjoined the sale abroad of infringing articles manufactured in the United States. See *Bullock Elec. & Mfg. Co.* v. *Westinghouse Elec. & Mfg. Co.*, 129 F. 105, 109 (6th Cir.), cert. denied, 194 U.S. 636 (1904); *Adriance, Platt & Co.* v. *McCormick Harvesting Mach. Co.*, 55 F. 288, 292 (C.C.N.D. Ill.) (citing *Ketchum Harvester*), aff'd, 56 F. 918, 918 (7th Cir. 1893) (per curiam) (affirming "for the reasons stated in the opinion of the court below"). And in *Dorsey Revolving Harvester Rake Co.* v. *Bradley Manufacturing Co.*, 7 F. Cas.

946 (C.C.N.D.N.Y. 1874), the court explained that a U.S. patentee is "at full liberty to retain to himself the advantage and profit of competing in foreign markets, by retaining the exclusive right to make and sell for export or use in other countries; not because the monopoly includes such other countries, but because his actual monopoly does include all making and selling here, with all the advantages which are incident thereto." *Id.* at 947.

b. Courts of appeals have taken a similar approach in the analogous context of copyright infringement, where the "predicate act" doctrine allows copyright owners "to recover damages flowing from exploitation abroad of the domestic acts of infringement." *Los Angeles News Serv.* v. *Reuters Television Int'l, Ltd.*, 149 F.3d 987, 992 (9th Cir. 1998), cert. denied, 525 U.S. 1141 (1999); see Pet. App. 178a-180a (Wallach, J., dissenting) (discussing this parallel); see also, *e.g.*, *Tire Eng'g & Distrib., LLC* v. *Shandong Linglong Rubber Co.*, 682 F.3d 292, 308 (4th Cir. 2012) (per curiam), cert. denied, 568 U.S. 1087 (2013); *Update Art, Inc.* v. *Modiin Publ'g, Ltd.*, 843 F.2d 67, 73 (2d Cir. 1988); *Sheldon* v. *Metro-Goldwyn Pictures Corp.*, 106 F.2d 45, 52 (2d Cir.) (L. Hand, J.), cert. denied, 308 U.S. 617 (1939), and aff'd, 309 U.S. 390 (1940).

To be sure, patent and copyright law "are not identical twins." *Sony Corp. of Am.* v. *Universal City Studios, Inc.*, 464 U.S. 417, 439 n.19 (1984). With respect to the question presented here, however, the damages provisions of the two statutes afford no evident textual basis for adopting different rules in the two contexts. Compare 35 U.S.C. 284 (award in patent-infringement suit may include damages "adequate to compensate for the infringement"), with 17 U.S.C. 504(b) (award in cop-

yright-infringement suit may include "the actual damages suffered by [the plaintiff] as a result of the infringement"). Indeed, decisions adopting the predicate-act doctrine in copyright cases have relied in part on the patent-law precedents discussed above. The leading predicate-act decision was written by Judge Learned Hand in *Sheldon*, in which he relied on this Court's patent-law opinions in *Manufacturing Co.* and *Dowagiac Manufacturing*, *supra*. See 106 F.2d at 52. And the earlier decision in *Fishel* v. *Lueckel*, 53 F. 499 (C.C.S.D.N.Y. 1892), relied on *Ketchum Harvester*, *supra*, to hold that "[t]he act of [copyright] infringement having been committed in this country, the subsequent acts abroad are immaterial, except upon the question of damages." 53 F. at 501.

The predicate-act doctrine does not appear to have generated any significant international tension. To the contrary, some foreign courts have adopted a similar rule, allowing the holder of a copyright to recover for losses that it suffered abroad because of an act of domestic infringement. See Rita Matulionyte, *Law Applicable to Copyright: A Comparison of the ALI and CLIP Proposals* 77-78 & n.21 (2011) (discussing a case involving Hummel plates where the German Federal Supreme Court held that damages for infringement in Germany could include damages from distribution outside Germany); Miguel A. Emery, *Argentina* § 8[4][a], in *International Copyright Law and Practice* (Lionel Bently ed. 2016) (discussing a similar Argentine case involving an infringing song by Julio Iglesias).

3. The court of appeals' approach disserves Congress's purpose, in enacting Section 284, of providing full compensation for U.S. patentees whose patents are infringed. That result is unwarranted in suits involving

direct infringement under 35 U.S.C. 271(a). The likelihood of undercompensation is particularly great, however, in suits (like this one) that involve the distinct form of infringement defined by 35 U.S.C. 271(f).

Section 271(f) provides that, under specified circumstances, the supply from the United States of components of a patented invention will constitute infringement of the patent. Congress enacted Section 271(f) in response to *Deepsouth Packing Co.* v. *Laitram Corp.*, 406 U.S. 518 (1972) (*Deepsouth*), in which this Court held that it was not infringement to supply from the United States all of the components of a patented invention for ready assembly abroad, because the completed invention was not "made" in the United States. *Id.* at 527-528. Section 271(f) abrogates *Deepsouth* by effectively treating the domestic supply of the components of a patented invention for assembly abroad as tantamount to the domestic manufacture of the completed invention for export. See *Life Techs. Corp.* v. *Promega Corp.*, 137 S. Ct. 734, 742-743 (2017).

Section 271(f) thus is directed at conduct that occurs within the United States but is expected to result in the foreign manufacture of a U.S.-patented invention. In cases involving that form of patent infringement, proof of the harm done to the U.S. patentee is particularly likely to involve evidence of conduct occurring outside this country. A rule precluding consideration of such evidence in calculating damages would thus be especially likely to produce undercompensation in cases involving infringement under Section 271(f).[3]

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[3] Section 284 provides that the compensatory-damages award in a successful patent-infringement suit shall "in no event [be] less than a reasonable royalty for the use made of the invention by the

C. The Presumption Against Extraterritorial Application Of U.S. Law Does Not Justify The Court Of Appeals' Refusal To Allow Recovery Of Profits That Petitioner Would Have Earned On The High Seas If Respondent Had Not Infringed Its Patent

In holding that compensatory damages under Section 284 cannot include lost profits that petitioner would have earned on the high seas, the court of appeals relied on the presumption against extraterritorial application of U.S. law. See Pet. App. 44a-45a. The court's reliance on that presumption was unwarranted.

1. "Absent clearly expressed congressional intent to the contrary, federal laws will be construed to have only domestic application." *RJR Nabisco, Inc.* v. *European Cmty.*, 136 S. Ct. 2090, 2100 (2016); see *Microsoft Corp.* v. *AT&T Corp.*, 550 U.S. 437, 456 (2007) (applying that presumption to 35 U.S.C. 271). That interpretive canon reflects the "commonsense notion that Congress generally legislates with domestic concerns in mind." *RJR Nabisco*, 136 S. Ct. at 2100 (quoting *Smith* v. *United States*, 507 U.S. 197, 204 n.5 (1993)). It also "protect[s] against unintended clashes between our laws and those

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infringer." 35 U.S.C. 284. Although no question concerning the calculation of a "reasonable royalty" is presented here, the court of appeals' approach has potential implications for that aspect of Section 284 as well. A "reasonable royalty" typically is the royalty that the patentee and infringer would have agreed to in a hypothetical licensing negotiation. See p. 3, *supra*. The amount that an infringer would be willing to pay for a license will depend in part on the extent to which the infringer could profit from the infringing conduct. If that determination must ignore the infringer's potential to earn profits outside the United States, the amount of the appropriate royalty may be significantly reduced. Cf. *Carnegie Mellon Univ.* v. *Marvell Tech. Grp., Ltd.*, 807 F.3d 1283, 1306 (Fed. Cir. 2015).

of other nations which could result in international discord," *EEOC* v. *Arabian Am. Oil Co.*, 499 U.S. 244, 248 (1991), and avoids "creat[ing] a potential for international friction," *RJR Nabisco*, 136 S. Ct. at 2106.

Reflecting those concerns, the presumption is "typically" applied "to discern whether an Act of Congress regulating conduct applies abroad." *Kiobel* v. *Royal Dutch Petrol. Co.*, 569 U.S. 108, 116 (2013). This Court has also applied the presumption when deciding which plaintiffs may invoke a private cause of action for violation of a federal statute that regulates foreign conduct. See *RJR Nabisco*, 136 S. Ct. at 2106; *F. Hoffmann-La Roche Ltd.* v. *Empagran S. A.*, 542 U.S. 155, 167 (2004). In doing so, this Court has recognized that "providing a private civil remedy for foreign conduct creates a potential for international friction beyond that presented by merely applying U.S. substantive law to that foreign conduct." *RJR Nabisco*, 136 S. Ct. at 2106.

The Court in *RJR Nabisco* refined the two-step framework for identifying impermissible extraterritorial applications of federal statutes. First, the Court "ask[s] whether the presumption against extraterritoriality has been rebutted" by "a clear, affirmative indication that [the statute] applies extraterritorially." 136 S. Ct. at 2101. If the presumption has been rebutted, then an extraterritorial application of the statute is permissible. But if the presumption has not been rebutted, "then at the second step [the Court] determine[s] whether the case involves a domestic application of the statute" by "looking to the statute's 'focus.'" *Ibid.* "If the conduct relevant to the statute's focus occurred in the United States, then the case involves a permissible domestic application even if other conduct occurred

abroad." *Ibid.* Although the inquiry will typically proceed in these two steps, courts are free to start at step two "in appropriate cases." *Id.* at 2101 n.5 (citing *Pearson* v. *Callahan*, 555 U.S. 223, 236-243 (2009)).

2. Section 284 does not contain any "clear, affirmative indication that [it] applies extraterritorially." *RJR Nabisco*, 136 S. Ct. at 2101. But the approach that petitioner advocates—*i.e.*, taking account of foreign conduct to ensure that a U.S. patent holder is fully compensated for domestic acts of patent infringement—is a "permissible domestic application" of that provision. *Ibid.*

a. Section 284 does not regulate conduct abroad, but rather ensures that a U.S. patentee is adequately compensated for domestic infringement of its rights under U.S. law. The underlying substantive provisions of the Patent Act likewise do not regulate extraterritorial conduct. The exclusive rights conferred by a U.S. patent apply only "throughout the United States" and to imports "into the United States." 35 U.S.C. 154(a)(1). Infringement similarly occurs only through conduct "within the United States," importing the invention "into the United States," or supplying "in or from the United States" components of that invention with the requisite intent that they be assembled abroad. 35 U.S.C. 271(a) and (f). Consistent with those limitations, petitioner sued respondent in U.S. court for a tortious personal injury defined by U.S. law—infringement of a U.S. patent—that respondent committed entirely within the United States.

b. In order to determine the extent of the financial harm that petitioner suffered as a result of respondent's infringement, the jury considered evidence concerning both the overseas conduct in which respondent's customers *actually* engaged, and the profit-making marine

seismic surveys that petitioner *would have* conducted on the high seas if the infringement had not occurred. The court of appeals viewed the jury's consideration of that evidence in the course of determining damages to be inconsistent with the presumption against extraterritoriality. See Pet. App. 44a-45a. In a variety of contexts, however, the application of U.S. patent laws to domestic events may depend in part on conduct that occurs overseas.

For example, a journal article describing an invention, published before the priority filing date of a U.S. patent application for the same invention, constitutes prior art that could be used as evidence of the patent's invalidity. See 35 U.S.C. 102(a). Although Section 102(a) does not expressly state that foreign publications can have that effect, this Court has long understood that provision and its statutory predecessors to encompass prior art published anywhere in the world. See, *e.g.*, *Seymour* v. *Osborne*, 78 U.S. (11 Wall.) 516, 554-555 (1871) (discussing an anticipation defense based on a London publication). Considering such foreign publications to determine whether a U.S. patent should be issued, or whether conduct occurring within the United States can give rise to liability for patent infringement, involves a permissible *domestic* application of the Patent Act.

Similarly, this Court held last Term that, when a U.S. patent owner authorizes the sale of an article embodying the patented invention, the U.S. patent rights in that article are exhausted. *Impression Prods., Inc.* v. *Lexmark Int'l, Inc.*, 137 S. Ct. 1523, 1535-1538 (2017). Describing the common-law tradition disfavoring restraints on the alienation of chattels as "borderless," the

Court held that even the foreign sale of a patented article by the patentee exhausts the patentee's domestic patent rights. *Id.* at 1536; cf. *Kirtsaeng* v. *John Wiley & Sons, Inc.*, 568 U.S. 519, 539-540 (2013). The effect of the Court's exhaustion holding was that the defendant's importation of the relevant articles into the United States did not constitute patent infringement. See *Impression Prods.*, 137 S. Ct. at 1535.

In these and other circumstances, evidence of foreign events can be—and regularly is—taken into account in applying the Patent Act to domestic conduct. Consideration of such evidence has never been viewed as implicating the presumption against extraterritoriality. The Court in *Impression Products*, for example, did not cite *RJR Nabisco* or refer to the presumption. Those decisions are also consistent with the more general principle that, even when particular conduct cannot be regulated directly, it may be considered as evidence in determining the legality of *other* conduct. Cf. *Wisconsin* v. *Mitchell*, 508 U.S. 476, 489 (1993) ("The First Amendment * * * does not prohibit the evidentiary use of speech to establish the elements of a crime or to prove motive or intent.").

Considering evidence of foreign conduct to measure the harm caused by domestic infringement likewise does not involve regulation of foreign conduct, and does not implicate the presumption against extraterritoriality. This Court assesses "whether [a] case involves a domestic application of [a] statute" by "looking to the statute's 'focus.'" *RJR Nabisco*, 136 S. Ct. at 2101; see *Morrison* v. *National Australia Bank Ltd.*, 561 U.S. 247, 266 (2010). The "focus" of Section 284 is on compensation for infringement of a U.S. patent. Congress's "overriding purpose [was] affording patent owners

complete compensation" for acts of infringement that by definition can occur only within the United States. *General Motors*, 461 U.S. at 655.

To identify the amount of "damages adequate to compensate for the infringement," 35 U.S.C. 284, judges and juries apply the background rules of proximate causation that have traditionally been used to determine whether particular harms are attributable to the defendant's tortious conduct. See pp. 10-12, *supra*. Just as the common-law tradition disfavoring restraints on the alienation of chattels is "borderless," *Impression Products*, 137 S. Ct. at 1536, the common law has historically recognized that a tort committed in one place can be the proximate cause of harm in another. See p. 12-13, *supra*. The rule that the Federal Circuit adopted, under which the profits that a U.S. patent holder would have earned outside the United States can never be included as an element of damages under Section 284, cannot be reconciled with that common-law rule or with Congress's intent to provide full compensation for losses caused by patent infringement.

3. This Court's decision in *RJR Nabisco* does not require a different result. In *RJR Nabisco*, the Court first held that 18 U.S.C. 1962 prohibits a pattern of racketeering activity that occurs abroad to the extent that the underlying RICO predicate offenses "themselves apply extraterritorially," as some predicates do. 136 S. Ct. at 2102. The Court concluded that, to that extent, "the presumption against extraterritoriality has been rebutted." *Id.* at 2101.

The Court further held, however, that RICO's private right of action allowing "[a]ny person injured in his business or property by reason of a violation of section 1962" to sue for treble damages, 18 U.S.C. 1964(c), does

not provide a cause of action to a plaintiff who suffered an injury only to his business or property abroad. *RJR Nabisco*, 136 S. Ct. at 2106. The Court explained that a private plaintiff "must allege and prove a *domestic* injury to its business or property," even when the underlying RICO predicates (and thus the substantive prohibitions imposed by RICO) apply extraterritorially. *Ibid.* The Court emphasized that extending a private right of action to encompass foreign injuries caused by a violation of a statute regulating foreign conduct creates an added potential for international friction. *Ibid.* The Court also noted that, "by cabining RICO's private cause of action to particular kinds of injury," Congress "signaled that the civil remedy is not coextensive with § 1962's substantive prohibitions." *Id.* at 2108. The Court thus implicitly concluded that Section 1964(c)'s "focus" is on the injury to the plaintiff's business or property.

Those holdings are inapposite here. Unlike some of RICO's predicate offenses, the Patent Act's substantive provisions regulate conduct only inside the United States. See p. 25, *supra*. Petitioner's reading of Section 284 therefore cannot produce an award of damages for harms suffered abroad as a result of legal violations outside the United States.[4] And unlike RICO's private

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[4] To be sure, the plaintiffs in *RJR Nabisco* alleged that the defendants had committed RICO predicate crimes inside as well as outside the United States. See 136 S. Ct. at 2105. The Court's holding that Section 1964(c) requires a domestic injury to business or property appears to bar any private suit alleging that a RICO predicate offense committed within the United States has caused injury abroad. Nothing in Section 1964(c)'s text, however, suggests that the availability of the private right of action depends on where the substantive violation occurred. Thus, to address the distinct problems that might result from construing Section 1964(c) to encompass foreign injuries caused by foreign violations, the private cause

cause of action, which is limited to a subset of the injuries that substantive RICO violations might cause, the Patent Act's cause of action is "coextensive with [its] substantive prohibitions" against infringement. *RJR Nabisco*, 136 S. Ct. at 2108; see 35 U.S.C. 281 (providing without qualification that "[a] patentee shall have remedy by civil action for infringement of his patent"). And while 18 U.S.C. 1964(c) defines the class of plaintiffs who can assert a private cause of action, Section 284 imposes no similar constraint on which plaintiffs can sue. Instead, it addresses only the relief that should be awarded after the plaintiff has already sued and proved infringement.

In decisions applying the presumption against extraterritoriality, this Court has identified as the "focus" of the relevant statute some conduct or event that the statute expressly referenced. The practical effect of applying the presumption has been to construe the statute as though it expressly required the referenced conduct or event to occur "in the United States." Thus, the Court in *RJR Nabisco* construed 18 U.S.C. 1964(c) as though it conferred a cause of action on "[a]ny person injured in his business or property *in the United States* by reason of a violation of section 1962." The Court in *Morrison* similarly construed a statute that forbids the use of certain fraudulent practices "in connection with the purchase or sale of any security," see 561 U.S. at 262

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of action must be limited to plaintiffs alleging domestic injuries, regardless of the place of the violation. Cf. *Clark* v. *Martinez*, 543 U.S. 371, 377-383 (2005) (holding that, when a statute has been definitively construed so as to avoid a potential constitutional infirmity, that construction governs even in factual circumstances that raise no meaningful constitutional concern).

(quoting 15 U.S.C. 78j(b)), to refer to "purchases and sales of securities in the United States," *id.* at 266.

In this case, by contrast, the activities that the court of appeals viewed as triggering the presumption against extraterritoriality—*i.e.*, the actual surveys performed by respondent's customers, and the additional surveys that petitioner would have performed if its patent had not been infringed—are not expressly referenced in Section 284. It therefore would be odd to treat those activities as the "focus" of the provision. And because Section 284 does not reference the (actual or hypothetical) extraterritorial events that are at issue here, construing that provision as though it included the words "in the United States" would not help respondents.

Section 284 provides that "the court shall award the claimant damages adequate to compensate for the infringement." 35 U.S.C. 284. The "focus" of that provision might reasonably be viewed as the "damages" that Section 284 mandates; the requirement that the award be "adequate to compensate" the patentee; or the "infringement" that those damages redress. Construing the statute to require that any or all of those events must occur "in the United States" would not bar the district court's damages award. A statute mandating "damages adequate to compensate for the infringement *in the United States*" would allow the award, since respondent's infringement did occur (as patent infringement by definition always does) in the United States. A statute mandating "damages *in the United States* adequate to compensate for the infringement" (or "damages adequate to compensate *in the United States* for the infringement") would allow the award as well, since the damages were awarded in this country and petitioner therefore will be compensated here.

Moreover, the court of appeals' interpretation of Section 284 would foreclose the court from awarding the full amount of damages necessary to make petitioner whole, notwithstanding Congress's directive that a court "shall" award "damages adequate to compensate for the infringement." 35 U.S.C. 284. As explained above, courts applying the presumption against extraterritoriality often construe federal laws to contain geographic limitations that are not reflected in any express statutory language. But construing the phrase "any person injured in his business or property" to mean "any person injured in his business or property *in the United States*" reflects the sort of modest emendation that the presumption against extraterritoriality characteristically entails. The court below, by contrast, effectively construed Section 284 to mean "[t]he court shall award the claimant damages adequate to compensate for *the profits the claimant would have earned in the United States but for* the infringement." Addition of the italicized language entails much more radical textual surgery of the sort appropriately reserved for Congress. Cf. *Jennings* v. *Rodriguez*, No. 15-1204 (Feb. 27, 2018), slip op. 2 (a court relying on the canon of constitutional avoidance "must *interpret* the statute, not rewrite it").

Section 284 differs from RICO's private right of action in another respect as well. Although a private RICO plaintiff must allege and prove injury to its own business or property, a RICO suit is premised on the defendant's violations of federal criminal laws that protect the general public, not the RICO plaintiff specifically. In a patent infringement suit, by contrast, the plaintiff may recover damages only for the violation of

its *own* legal rights. See 35 U.S.C. 154(a)(1) (a patent provides "a grant to the patentee" of certain rights).

Section 284 directs the court in a successful infringement suit to award "damages adequate to compensate for the *infringement*," not damages adequate to compensate for the economic losses the patentee suffered as a result of the infringing conduct. The "infringement" to which Section 284 refers is in every such case a legal injury that the patent holder itself has suffered within the United States. See *Black's Law Dictionary* 905 (10th ed. 2014) (defining "injury" as "[t]he violation of another's legal right, for which the law provides a remedy; a wrong or injustice"). Section 284's text and purpose thus reflect the provision's domestic focus, even in cases where the consequences of infringing conduct include the loss of profits that the patentee otherwise would have earned overseas.

CONCLUSION

The judgment of the court of appeals should be reversed.

Respectfully submitted.

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